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Filed on behalf of Activision Blizzard, Inc.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
Petitioner

v.

MILESTONE ENTERTAINMENT, LLC,
Patent Owner

Case No. IPR2025-00711
U.S. Patent No. 11,335,164

**PETITIONER'S REPLY TO
PATENT OWNER'S RESPONSE**

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I. INTRODUCTION

The Challenged Claims of the '164 Patent—namely, claims 1, 2, 4-7, 9, 11-13, 15, 19, 23-24, and 29—should not have been issued.

To that point, PO does not dispute that all Challenged Claims (with the exception of dependent claims 7 and 9) are obvious over the asserted prior art. Nor could PO credibly raise such a dispute. The use of virtual currency and mandated parameters (parameters to be achieved by the system as a whole such as prize-pay out or win rates) in electronic games as recited in the Challenged Claims has been known for decades. Consequently, as PO effectively admits, the Petition more than meets the burden to show that all the Challenged Claims are unpatentable. At bottom, there is no question that the Board should cancel these Challenged Claims.

The Board need only decide two issues—whether the asserted prior art renders obvious the additional limitations of dependent claim 7 (*threshold value includes information on frequency of play*) and dependent claim 9 (*threshold value includes information on the number of plays since a last win*). And the answer is simple—Kelly683 and Walker both disclose these limitations.

There is no dispute that Kelly683 and Walker disclose the limitation on which these claims depend: *a threshold value to change from the first game play experience to the second game play experience*. EX1001, cl. 5; Pet., 30, 67. Yet PO argues that the asserted prior art does not render obvious dependent claims 7 and 9 because the

prior art does not expressly disclose that the threshold value is the frequency of games played and the number of plays since the last win, respectively. PO's arguments are meritless. *First*, PO requires that the threshold value *is* the frequency of play (for claim 7) and *is* the number of plays since the last win (for claim 9). But the claim language merely recites the threshold value *includes information on* the frequency of play and the number of plays since a last win. PO cannot rewrite the claim language. *Second*, the asserted prior art discloses these limitations even under PO's erroneous construction, disclosing the very same embodiments disclosed in the '164 Patent.

Because the asserted prior art also renders obvious claims 7 and 9, the Board should find all Challenged Claims of the '164 Patent unpatentable.

II. CLAIM CONSTRUCTION

Both parties agree that no express claim construction is required to determine the unpatentability of the Challenged Claims. Pet., 13; POR, 8-9. Yet PO nonetheless attempts to rewrite the terms in claims 7 and 9 as shown in redline below:

- “threshold value ~~includes information on~~ is frequency of play” (claim 7)
- “threshold value ~~includes information on~~ is the number of plays since a last win” (claim 9)

See POR, 11. It is black-letter law that each word in a claim has meaning. *Bicon*,

Inc. v. Straumann Co., 441 F.3d 945, 950 (Fed. Cir. 2006) (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”); *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004) (“[W]e construe the claim as written, not as the patentees wish they had written it.”). As such, PO’s unsupported constructions (which vitiate the words “includes information on”) should be rejected.

**A. “threshold value includes information on frequency of play”
(claim 7)**

PO’s Construction	Petitioner’s Construction
“[threshold value is] how often play occurred over some period of time or across a given sample, <i>i.e.</i> , a rate” POR, 11	plain and ordinary meaning.

The dispute between the parties is whether Kelly683’s disclosure of “number of times played” and Walker’s separate disclosures of “all game plays played during a specific period of time” and “total time spent playing” falls within the scope of the limitation “threshold value includes information on the frequency of play.” PO argues that they do not because the threshold value must itself be a rate. But that is not the plain meaning of the phrase and is unsupported by the intrinsic evidence.

1. The intrinsic evidence confirms that the term has its plain and ordinary meaning

The intrinsic evidence confirms that this term has its plain and ordinary

meaning, which does not limit the “threshold value” to a rate.

Although the terms “threshold value” and “frequency of play” are not used in the specification of the '164 Patent, the specification does describe a “frequent player” and values associated with the “frequent player.” *See, e.g.*, EX1001, 36:21-22. For example, Fig. 20D shows “data elements [for] potential [] use in the system.” *Id.*, 36:4-5. This includes a data field that indicates “simply whether the person is a frequent player.” *Id.*, 36:21-22; *see also id.*, Fig. 20D (below).

Citizenship Information	Computer Address	E-mail Address	Physical Address	Registered Frequent Player
469384323FR	1324597223	jami@hotmail.com	3 rue de la Seine Paris, FR	yes
3555462NL	3968736293	FRStone@aol.com	unknown	no
SSN 564-35-1283	6945112442	unknown	unknown	no
SSN 523-25-3232	6978854645	dons@earthlink.et	1243 Main St. Yuba, CA 91331	Yes

information on
frequency of play




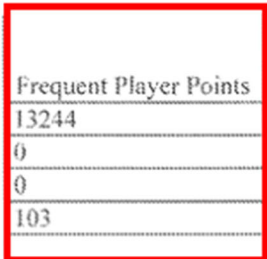
FIG. 20D

The game processor could utilize a “yes” or “no” (*threshold value*) to change from the first game experience to the second game play experience. *See id.*, cl. 5. For example, if a player is not a frequent player, the system could change the prizing structure to award the player with more prizes to encourage the player to play more.

Similarly, the specification also discloses that another data field that “relate[s] to the frequent player aspect” is “the number of points they possess.” *Id.*, 36:20-23. Notably, Fig. 20E shows the number of “frequent player points” associated with a

player.

information on frequency of play



Frequent Player Points	Form of Compensation	Acknowledgment Number
13244	Cash	4220263541000eoke
0	Airline Miles	164777538865
0	Further Game Play	164777538866
103	Cash	164777538867

FIG. 20E

The game processor could also utilize a threshold number of points (*threshold value*) to change from the first game experience to the second game play experience. See EX1001, cl. 5. Indeed, the specification expressly states that “[t]he allocation of prizes may be defined in various ways, such as...based on the *number of plays* for a particular player.” *Id.*, 7:9-13 (emphasis added).

Importantly, the data fields related to “frequent players” disclosed in the ’164 Patent confirm that “information on frequency of play” does not need to be a rate. For example, a “yes” or “no” in the “frequent player” field (EX1001, Fig. 20D) is a binary indicator derived from the frequency of play; that is, it represents “*information on* frequency of play” without being a rate. Specifically, a “no” in the “frequent player” field or a “0” in the “frequent player points” field will provide information that the player is not frequently playing (*information on the frequency of play*). See EX1001, Figs. 20D and 20E. The examples show that the *threshold value* can be a binary indicator or just a number, and a rate.

PO claims “*frequency* of play” means “how often play occurred over some period of time or across a given sample, *i.e.*, a rate.” POR, 11 (emphasis in original). PO points to the specification as supporting this meaning where it describes “‘frequency of wins’ as ‘(1:X).’” POR, 11-12. But this passage does not relate to “frequency of play.” While this passage includes the word “frequency,” it does not address what is encompassed by “frequency of play.” Indeed, PO argues that “X” must mean “some period of time or across a given sample,” but PO provides no support for this argument.

More critically, PO completely ignores that the claim language recites “threshold value includes information on frequency of play,” not “threshold value is frequency of play.” Notably, PO’s overly narrow construction would exclude the embodiments that are directly on point—the frequent player and frequent player points data fields and “numbers of plays for a particular player” that include information on frequency of play but are not a rate. *See Anchor Wall Sys., Inc. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1308 (Fed. Cir. 2003) (“[A] claim construction that excludes a preferred embodiment ... is rarely, if ever correct”) (internal quotation marks omitted).

2. PO’s extrinsic evidence cannot overcome the intrinsic evidence

The extrinsic evidence is of no help to PO. “[E]vidence extrinsic to the patent

and prosecution history, such as expert testimony, cannot be relied on to change the meaning of the claims when that meaning is made clear by those documents.” *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1578 (Fed. Cir. 1995). That is particularly so here, where the extrinsic “evidence” does not actually support PO’s construction.

First, PO cites to the Microsoft Computer Dictionary to support its construction. POR, 12. But this definition is inapplicable as it refers to frequency in the signal processing context, not the electronic gaming context. EX2014, 4 (discussing frequency in the context of hertz).

Second, PO relies on expert testimony. POR, 12. But Mr. Szeder provides no specialized knowledge on the meaning of frequency of play. He merely relies on the same erroneous dictionary definition and an inapplicable passage from the specification to “opine” that the “threshold value includes information on the frequency of play” must be a rate without addressing the frequent player or number of plays embodiments of the ’164 Patent. Szeder Decl., ¶¶66, 74.

B. “threshold value includes information on the number of plays since a last win” (claim 9)

PO's Construction	Petitioner's Construction
“[threshold value is] the number of plays since a last win” POR, 14	plain and ordinary meaning.

The dispute between the parties is whether Kelly683's disclosure of “every 8,000 games, two video consoles are to be awarded” and Walker's disclosure of awarding a prize “if a player achieves a particular event or level of achievement in one or more game plays of a game (e.g., the player gets to level 3 of the game within two consecutive game plays)” (Pet., 70) falls within the scope of the limitation “threshold value includes information on the number of plays since a last win.” POR, 13-14; *id.*, 19 (citing Pet., 69-70). PO argues that they do not because the system must adjust the game “based on...the number of plays since a last win.” *Id.* But again, that is not the plain meaning of the phrase and is unsupported by the intrinsic evidence.

1. The intrinsic evidence confirms that “threshold value” has its plain and ordinary meaning not limited to the number of plays since the last win

The term “last win” is not used in the specification, but the specification uses the “number of plays” in different embodiments where information on the number of plays since the last win is included, including as the criteria to adjust the game.

For example, in one embodiment, “[t]he set of plays by a given player may be subject to the prizing structure rules such that a player could be guaranteed a certain minimum prizing over some number of plays, e.g., 50 plays.” EX1001, 12:39-42.

Indeed, the specification does not describe the criteria to adjust the game or prize structure as the number of plays since the last win. Rather, the only time the specification discusses the combination of number of plays and wins is when disclosing embodiments that discuss minimum prizing or wins for a certain number of plays. *See id.*, 7:9-12 (“The allocation of prizes may be defined in various ways, such as by defined numbers and values of prizes ... system-wide for every Nth play”); 17:18-21 (“Prize allocation may be utilized such as where the prizes are allocated ... by number of plays (1:X)”).

PO argues that the system must adjust the game “based on...the number of plays since a last win” (POR, 21), effectively rewriting the claim term to read that “the threshold value is the number of plays since a last win” instead of “the threshold value includes information on the number of plays since a last win.” But PO cites to no support for this position, nor could it.

2. PO’s unsupported expert testimony cannot rewrite the claim language

PO’s expert does not directly opine that “threshold value is the number of games played,” but states that it is “the threshold value itself that will be used to

evaluate” and that it must be “based on, or include information on, the number of plays since a last win.” Szeder Decl., ¶81. But PO’s expert provides no support for his opinion that “include information on” means “based on” or “is.” Because there is none.

To the contrary, other dependent claims confirm that when the patentee meant “based on,” the claim recited those actual words. *See* EX1001, cls. 10 (“set based on a comparison”), 11 (same), 27 (“limit on the amount of game play is based on time”), 28 (“limit on the amount of game play is based on a monetary amount”). For claim 9, the patentee chose not to use “based on,” and that phrase should not be conflated with “included information on.”

Regardless, PO’s expert testimony should be given no weight, particularly here where his opinion is untied to any evidence. *Phillips v. AWH Corp*, 415 F.3d 1303, 1318 (“[C]onclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court.”).

III. GROUNDS 1 AND 2: KELLY683 DISCLOSES CLAIMS 7 AND 9 UNDER EITHER PARTIES’ CONSTRUCTION

A. PO does not dispute that Kelly683 alone, in view of the knowledge of the POSITA, or further in view of Paulsen renders obvious claims 1, 2, 4-6, 11-13, 15, 19, 23-24, and 29

PO does not dispute, and therefore has waived, all arguments regarding the unpatentability of these claims.

B. Kelly683 discloses “threshold value includes information on frequency of play” (claim 7) under either construction

Kelly683 discloses the limitation of claim 7 under any reasonable construction because Kelly683 discloses the very same embodiment disclosed in the '164 Patent, both disclosing “information on frequency of play” as the number of plays for a particular player. *See supra* Section II.A.1. Specifically, the '164 Patent teaches that “[t]he allocation of prizes may be defined in various ways, such as ... based on the number of plays for a particular player, or groups of players.” EX1001, 7:9-13. Kelly683 similarly teaches that the game can be modified based on the number of times played. EX1005, 40:34-39 (“the system can automatically adjust the hit ratio to the actual win frequency determined from the players’ use of the game unit **10** by, for example, *storing the number of games played*”) (emphasis added); *see also id.*, 40:41-44.

1. Kelly683 discloses the limitation of claim 7 under its plain and ordinary meaning

The Petition established that Kelly683 discloses the *threshold value includes information on frequency of play*. Pet., 30-31; EX1003 (Crevelt Decl.) ¶¶232-233; EX1005, 40:19-39. In particular, Kelly683 discloses a “predetermined” or “adjust[able]” “hit ratio” that can be used to indicate when “a specific prize goal is met and thus a specific prize is won.” Pet., 31; EX1005, 40:19-39. The “hit ratio” or desired odds is the *threshold value* and Kelly683 explains that “the system can

automatically adjust the hit ratio to the actual win frequency determined from the players' use of the game unit **10** by, for example, storing *the number of games played* and the number of times the specific prize goal was hit.” EX1005, 40:35-39 (emphasis added).

Just as in the '164 Patent, the allocation of prizes in Kelly683 is based on the number of games played. The hit ratio, which includes the number of games played, includes information on the frequency of play. If the number of games played is low, the frequency of play is low. If the number of games played is high, the frequency of play is high. Thus, Kelly683 discloses *threshold value includes information on frequency of play* under its plain and ordinary meaning.

2. Kelly683 discloses a *frequency of play* as a rate even under PO's erroneous construction

PO argues that “Claim 7 is not met by a disclosure of ‘the number of times played’” because that phrase “reflects a count of the number of times a game has been played, not a frequency of play.” POR, 11. In particular, PO complains that “the threshold value [must] include information on how often play occurred over some period of time or across a given sample, *i.e.*, a rate.” *Id.* But the number of times played discloses exactly that—a rate.

First, the number of times played does include “how often play occurred over some period of time or across a given sample.” In particular, the number of times

played is how often play occurred across a given sample—namely, the lifetime of a game. Whether a player has played a game 0 times or 50 times, this “number” provides a rate—the player has played N times during the lifetime of the game (N times:1 lifetime of the game).

Second, the term “hit ratio” itself demonstrates that the number of times played is a rate or frequency under PO’s construction. As Petitioner’s expert Mr. Crevelt explained, the term “hit ratio” is also referred to as “hit frequency” because it must be determined over a specific period of time or sample which a certain number of games have been played. EX1005, 40:26-30; *see also* EX1003 ¶233; EX2012 (Crevelt Tr.), 22:9-14 (A “win ratio is how often the game hits or you get a winner” and “sometimes it is referred to as a hit frequency”). Hit ratio (or hit frequency) is calculated as:

$$\textit{hit frequency} = \frac{\frac{\textit{number of wins}}{\textit{sample (X)}}}{\frac{\textit{number of games played}}{\textit{sample (X)}}} = \frac{\textit{frequency of wins (1:X)}}{\textit{frequency of plays (1:X)}}$$

The “hit ratio,” then, “includes *information on*” the “number of games played” over that specific period of time, i.e., the frequency of play. In fact, PO appears to agree that “hit ratio” includes information on “frequency.” *See* POR, 11-12 (describing “1:X” as a win “frequency”).

Thus, basic math confirms the “number of games played” used to calculate the hit ratio disclosed by Kelly683 also meets the “threshold value includes information on the frequency of play” under PO’s erroneous construction.

C. Kelly683 discloses the “threshold value includes information on the number of plays since a last win” (claim 9)

Kelly683 discloses the very same embodiment disclosed in the '164 Patent, both disclosing “information on the number of plays since a last win.” *See* III.B *supra*. In particular, the '164 Patent teaches that “[t]he set of plays by a given player may be subject to the prizing structure rules such that a player could be guaranteed a certain minimum prizing over some number of plays, e.g., 50 plays.” EX1001, 12:39-42. Kelly683 similarly teaches awarding a minimum number of prizes over a certain number of plays. EX1005, 37:1-6; 36:32-36.

1. Kelly683 discloses the limitation of claim 9 under its plain and ordinary meaning

The Petition established that Kelly683 discloses the *threshold value includes information on number of plays since the last win*. Pet., 31; EX1005, 36:63-37:9; EX1003 ¶235.

Mr. Crevelt explains that for “prizes [to be] awarded according to the operator’s desired odds,” the system of Kelly683 “keep[s] track of *the number of plays since a last win*.” EX1003 ¶235 (emphasis in original); EX1005, 36:30-37. For example, where the desired odds provides for one prize for every 4,000 games,

Kelly683 expressly discloses that “the system checks whether the current game is the 4000th game (where the goal was met) *since the video game console was last awarded* to player on this game unit **10** (or the 4,000th game since console was awarded within the entire redemption system, i.e., among multiple game units **10**.)” EX1005, 36:32-37. Thus, Kelly683 discloses the *threshold value includes information on the number of plays since the last win* under its plain and ordinary meaning.

2. Kelly683 discloses the *threshold value is the number of plays since last win* under PO's erroneous construction

PO complains that Kelly683 (EX1005, 36:63-37:9) “does not disclose the number of plays since a last win of a video console” because Kelly683 does not “us[e] such tracking as a threshold value to alter the game play variable parameters to provide a second gaming experience.” POR, 14. Specifically, PO asserts that “[a]t most, this portion of Kelly could be read to disclose that over the course of 2,999 games, leading up to the 3,000th game, the system knows it has awarded two video consoles to players.” *Id.* Not so.

PO ignores that one way Kelly683 teaches implementing the video game console embodiment is by using a counter to determine whether the desired odds (*threshold value*) has been achieved. Kelly683 explains “whenever a game is played on game unit 10, a game counter is incremented.” EX1005, 36:28-30. “[T]he system

checks whether the current game is the 4000th game where the goal was met) since the video game console was last awarded to a player on this game 10” by using the counter to determine whether the desired odds (*threshold value*) has been met. *Id.*, 36:32-35. “If so, the console is awarded,” and if not, the prizing structure is changed (*to change from the first game play experience to the second game play experience*). *Id.*, 36:37-44. PO’s conclusory statement ignores this disclosure by Kelly683 where a counter is used to determine whether a prize for every Nth game has been awarded, satisfying PO’s construction.

PO further Mr. Crevelt’s testimony arguing that he “testified that a POSITA would understand this passage to describe that ‘two different players would be awarded a prize’—not that the system is tracking the number of plays since a win.” POR, 14. However, Mr. Crevelt is merely clarifying, as prompted by PO, that two different players would be awarded a prize and, in that instance, it would have been a video console. *See* EX2012, 105:16-25. The identified portion of Mr. Crevelt’s testimony does not pertain to *information on the number of plays since a last win*, rather Mr. Crevelt explains that “the video consoles are prizes” in the context of *programmable parameters*. Regardless, it is consistent with Kelly683’s disclosure that the system tracks the number of plays since the last win disclosing that the “threshold value includes information on the number of plays since a last win” even under PO’s erroneous construction.

IV. GROUND 3: WALKER ALONE, OR IN VIEW OF KNOWLEDGE OF A POSITA, DISCLOSES CLAIMS 7 AND 9**A. PO does not dispute that Walker in view of Schneier¹⁴³ renders obvious claims 1, 2, 4-6, 11-13, 15, 19, 23-24, and 29**

PO does not dispute, and therefore has waived, all arguments regarding the unpatentability of these claims.

B. Walker discloses “threshold value includes information on frequency of play” (claim 7) under either parties’ construction

Walker discloses the limitation of claim 7 under either construction because Walker discloses multiple embodiments utilizing *information on frequency of play*, including the very same embodiment disclosed in the '164 Patent. Cf. EX1001, 7:12-13 (“number of plays for a particular player”) to EX1006, ¶[0237] (“all game plays played by a particular player”). Walker also discloses the number of plays over different periods of time and different samples. EX1006, ¶[0236] (“all game plays played during a specific period of time (e.g., all game plays played in the last week, all game plays played within two weeks of a promotion)”).

1. Walker discloses the limitation of claim 7 under its plain and ordinary meaning**a. Walker's game play data sets disclose this limitation under its plain and ordinary meaning**

The Petition establishes that Walker discloses the *threshold value includes information on frequency of play*. Pet., 68-69; Crevelt ¶341. Specifically, Walker discloses that the system has predetermined criteria (*threshold value*) that is used to

adjust the game (*to change from the first game play experience to the second game play experience*) depending on whether the criteria is met. EX1006, ¶[0267]. The predetermined criteria may be “a predetermined minimum threshold” or “a predetermined maximum threshold.” *Id.*, ¶[0249]. The predetermined criteria may be a minimum predetermined threshold of 10 game plays in a one week period. The controller will select a data set, such as “all game plays played in the last week” (*id.*, ¶[0236]), and then “determine whether the set of results selected [] satisfies the...predetermined criteria associated with the game.” *Id.*, ¶[0248]. The 10 game plays in a one week period is *information on frequency of play*. Accordingly, Walker discloses the limitation of claim 7 under the plain and ordinary meaning.

b. Walker's other embodiments disclose this limitation under its plain and ordinary meaning

The Petition also establishes that Walker discloses many other embodiments teaching this limitation, including predetermined criteria for the “total time spent playing,” “number of lives lost,” and “number of questions answered correctly.” Pet., 68-69. PO reasoning for discounting these embodiments based on its overly narrow construction is flawed.

First, PO argues that “total time spent playing” does not meet this limitation. POR, 16. But just like the disclosure of frequent player points in the '164 Patent, *information on frequency of play* can just be a number. As Mr. Crevelt explained,

the “total time spent playing” a game provides information on frequency of game play in that the more time spent playing, the more frequently a game is played. Pet., 68; Crevelt ¶340. In other words, a player with a higher total time spent playing is likely to have a higher frequency of play. Similarly, knowing that a player has 0 frequency player points provides you information on their frequency of play, namely a low frequency of play.

PO argues that “a game could be played for 100 hours, once and more than year ago, or it could be played for 100 hours over 1000 plays within the last month, with the specific period indicating a low frequency (once, more than a year ago) or high frequency (1000 times in the last month).” POR, 16-17. But PO ignores that Walker teaches that the controller will “determine whether the set of results selected [] satisfies the...predetermined criteria” meaning that the predetermined criteria (*threshold value*) will use the same selection condition (e.g., total time for a particular player or total for all players in the last month) to make the adjustment determination. EX1006, ¶¶[0235]-[0237], [0248]. As such, the predetermined criteria will *include information on the frequency of play* to make that determination.

Second, PO argues that the “number of lives lost” is not a rate noting that “those lives lost...may have occurred long ago in one or a few plays; or they may have occurred within the last day, over a course of repeated plays.” POR, 17. But like guarantees on the number of wins and prizes, the number of lives lost (or losses)

provides *information on frequency of play*. Pet., 68; Crevelt ¶340. In this embodiment, the system monitors the “number of lives lost” over a specific period of time and compares it to a “predetermined criteria” (*threshold value*) to determine further game play. See EX1006, ¶¶[0245]; EX2012 102:8-24 (discussing changing game parameters to make the second game play experience more difficult from the first game play experience).

Finally, PO argues that the “number of questions answered correctly” fails to indicate when the questions were answered and therefore cannot indicate *frequency*. POR, 17. But a higher “number of questions answered correctly” would generally indicate an increased frequency of game play, because Walker teaches comparing the number with predetermined criteria. Pet., 68; Crevelt, ¶340. Walker's system would determine the number of questions answered correctly, compare it to a predetermined criteria (*threshold value*), and adjust the game (increase or decrease game difficulty) according to the desired outcome (e.g., increase/continue player engagement). EX1006, ¶¶[0245], [0249].

Accordingly, Walker's other embodiments disclose the limitation of claim 7 under the plain and ordinary meaning.

2. Walker discloses frequency of play as a rate under PO's erroneous construction

As discussed in Section IV.B.1.a, Walker discloses a “predetermined criteria”

(*threshold value*) that can be “a predetermined minimum threshold” or “a predetermined maximum threshold” that can be “all game plays during a specific period of time” or “all game plays” across various samples such as “a particular player” or “a specific type of player.” *Id.*, ¶¶[0235]-[0244], [0249].

Yet PO still argues that these disclosures fall short because they only “describe[] how the tracked game play results that will be compared to a threshold value will be selected” instead of “information on the frequency of play.” POR, 17. Nonsense. Walker describes a data set comprising “all game plays played during a specific period of time” (EX1006, ¶[0236]) or across other samples must be compared to a “predetermined criteria,” like a “predetermined minimum threshold” value of, for instance, five plays over the “specific period of time” or selected other samples. Pet., 68-69; Crevelt ¶341. Such a threshold value, then, would directly provide *information on the frequency of play*. If a user has not played a game more than five times over the specific period of time or across the sample, then the system could adjust the game or prizes to encourage the user to increase game play, *i.e.*, *frequency of play*. Pet., 51-52; EX1006, ¶[0267].

C. Walker renders obvious “wherein the threshold value includes information on the number of plays since a last win” (claim 9)

1. Walker discloses the limitation of claim 9 under its plain and ordinary meaning

The Petition establishes that Walker discloses that a set of results may include

“all game plays played during a specific period of time,” such as “all game plays played within two weeks of a promotion,” to be compared to the predetermined criteria (*threshold value*). Pet., 69; Crevelt ¶343; EX1006, ¶[0236]. A POSITA would have understood “promotion” to be a win. Pet., 69-70; Crevelt ¶343. And as Walker discloses, “a prize may be awarded if a player achieves a particular...level of achievement in one or more plays of a game (e.g., the player gets to level 3 of the game within two consecutive game plays.” Pet., 70; Crevelt ¶343. Put simply, these Walker embodiments reflect the “guaranteed...minimum prizing over some number of plays” embodiment disclosed in the '164 Patent. EX1001, 12:39-42.

2. Walker renders obvious claim 9 under PO's erroneous construction

As discussed in Section IV.C.1, Walker discloses a predetermined criteria to compare to “all game plays played within two weeks of a promotion” and awarding a prize “if a player achieves a particular event or level of achievement in one or more game plays of a game (e.g., the player gets to level 3 of the game within two consecutive game plays).” EX1006, ¶¶ [0236], [0265]. Like the minimum prizing over a number of plays embodiment in the '164 Patent, Walker teaches that the predetermined criteria could be implemented by tracking “all games plays played within two weeks of a promotion [i.e., win].” Pet., 70; Crevelt ¶343.

Moreover, Walker discloses that the system monitors “variance in prizes

awarded” to determine whether players are winning too much (“prizes for a game is too high”) or too little (“prizes for a game is ... too low”) and “modif[ies] the game to alleviate this problem.” EX1006, ¶[0025]. The system does this during “game play” in “an attempt to obtain a score or *win a prize* in accordance with the rules of the game” which “ends at a designated time,” for instance “*once a prize is won* or a number of ‘lives’ or ‘rounds’ is played *without having won the prize.*” EX1006, ¶[0027].

PO argues that “Petitioner implausibly contends that a ‘POSITA would have understood that a promotion in Walker is a game play win that results in a player’s promotion to the next level of a game (*a last win*)” because PO claims a POSITA would understand “promotion” to refer to marketing and not advancing to a next level of a game. POR, 19. PO points to the use of the term “promotion” in the ’164 Patent. But the question is not how the patentee used the term “promotion” but how Walker used the term. And PO’s “promotion” interpretation lacks support in Walker (and regardless, Walker discloses the “number of plays since a last win” beyond its use of the term “promotion”).

In the context of Walker, a POSITA would have understood the term “promotion” to be an advancement to the next level of a game. Pet., 69-70; Crevelt ¶[343; EX1006, ¶[0236]. PO argues the term promotion refers to marketing (POR, 20), but Walker uses the term “advertisement” earlier in the patent to describe

marketing-related activities. *See* EX1006, ¶¶[0198]. And there is no passage in Walker that ties promotion to a marketing or advertisement. Rather, promotion is only tied with game plays, and game plays are also discussed in relation to achievements or other advancements. *Id.*, ¶¶[0265]. Regardless, whether “promotion” is a marketing promotion or an in-game advancement event, Walker uses “promotion” as an identifiable reference point for selecting a time-bounded set of game plays.

Next, PO argues Petitioner “pointed to no disclosure in Walker that the threshold...will be used to evaluate...results...based on...the number of plays since a last win,” and that Petitioner’s disclosures “describe a selection protocol for game outcome data, not a threshold value that includes information on plays since last win.” POR, 21. Incorrect. For instance, the Petition establishes that Walker discusses the “number of levels completed,” and a win/awarding of a prize “if a player achieves a particular...level of achievement in one or more game plays of a game (e.g., the player gets to level 3 of the game within two consecutive game plays).” Pet., 70 (citing EX1006, ¶¶[0245], [0265]). Here, the number of plays since a last win would be included in the information collected to determine whether a player is to be awarded a prize.

Moreover, PO ignores Walkers disclosure that the system monitors “variance in prizes awarded” to determine whether players are winning too much (“prizes for

a game is too high”) or too little (“prizes for a game is ... too low”) and “modif[ies] the game to alleviate this problem.” EX1006, ¶[0025]. The system must necessarily track the last win to do so.

Accordingly, Walker discloses the *threshold value includes information on the number of plays since a last win* even under PO's erroneous construction.

V. CONCLUSION

The Board should find all the Challenged Claims unpatentable.

Dated: March 27, 2026

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that foregoing **PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE** exclusive of the parts exempted as provided in 37 C.F.R. §42.24(c), contains 5,579 words and therefore complies with the type-volume limitations of 37 C.F.R. §42.24(c).

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2026, a true and correct copy of the foregoing **PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE** is being served by electronic mail on Patent Owner's counsel of record listed below, pursuant to its Mandatory Notices:

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